IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1108 OF 2007

Legrand (India) Private Limited .. Petitioner

V/s.

The Union of India & Ors.. Respondents.

Mr.Prakash Shah i/b P.D.S.Legal for Petitioner.

Mr.A.J.Rana,Sr.Counsel with Mr.R.V.Desai,Sr.Counsel with Mr.P.S.Jetley for Respondents.

CORAM : DR.S.RADHAKRISHNAN
and V.C.DAGA, JJ.

DATED : 21st June 2007.

JUDGMENT (Vijay Daga, J)

Rule returnable forthwith.

1. Heard finally by consent of parties.

2. Perused petition and counter affidavits.

3. The petitioner, through this petition filed under Article 226 of the Constitution of India, has brought to our notice prima facie, wilful and deliberate

disobedience on the part of the Assistant Commissioner of Customs (Import) to the law laid down by this Court in the case of Mahindra and Mahindra Ltd vs.Union of India 1992 (59) ELT 505 (Bom), Ocean Centres vs Union of India 2005 (180) OLT 313 (Bom); and in the case of Noble Society vs Union of India 2005 (187) ELT 438 (Bom) wherein this Court has laid down and followed from time to time that during the period of limitation available for filing an appeal, no coercive action should be taken to enforce the order. The Assistant Commissioner of Customs (Import) in breach of the law laid down by this Court, which was specifically brought to its notice, encashed bank guarantee worth Rs.14,33,000/- (before expiry of the appeal period) which was furnished by the petitioner by way of security pending adjudication of dispute.

4. When the aforesaid prima facie and willful disobedience was brought to our notice, by an interim order dated 26th April, 2007 respondents were directed to deposit Rs.14,33,000/- with this Court with a further order issuing show cause notice to the Assistant Commissioner of Customs (Imports) as to why action under the provisions of the Contempt of Court Act should not be initiated for prima facie wilful

disobedience of the law laid down by this Court in the judgment referred to hereinabove and that the conduct of the Assistant Commissioner of Customs (Import) in not following the decisions of was calculated to undermine the dignity and majesty of the court and impair the constitutional authority of High Court.

5. The legal position regarding the binding nature of judgments delivered by High Court was clearly explained as far back as 1962 by the Supreme Court. In East India Commercial Co. Ltd v Collector of Customs, Calcutta, AIR 1962 SC 1893, Subba Rao, J (as he then was) speaking for himself and Mudholkar, J has explained, though A.K.Sarkar, J (the Third Member of the Bench) did not fully agree with this aspect of the legal position, the law laid down (para 29 of thereof) reads as under:

> . " This raises the question whether an administrative tribunal can ignore the law declared by the highest Court in the State and intiate proceedings in direct violation of the law so declared under Art. 215, every High Court shall be a Court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Under Art. 226, it has plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority including inappropriate cases any Govt. within its territorial jurisdiction. Under Art. 227 it has jurisdiction over all Courts and tribunals throughout the territories in relation to

> which it exercises jurisdiction. It would be anomalous to suggest that a tribunal over which the High court has superintendence can ignore the law declared by that Court and start proceedings in direct violation of it. If a tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working ;otherwise there would be confusion in the adminstration of law and respect for law would irretrieably suffer. We, therefore, hold that the law declared by the highest court in the State is binding on authorities, or tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so, the notice issued by the authority signifying the launching of proceedings, contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be without jurisdiction."
>
> (Emphasis supplied by us)

6. The above legal position was reiterated in Makhan Lal vs State of Jammu and Kashmir AIR 1971 SC 2206. It was in the context of the law declared by the Supreme Court that the decision laid down to that effect so far as Art. 141 of the Constitution was concerned, but what has been observed in para 5 at p.2209 by Grover, J speaking for the Supreme Court has equal application so far as pronouncements by the High

Courts are concerned. Grover, J observed (at page 2209)-

> " The judgment which was delivered did not merely declare the promotions granted to the respondents in the writ petition filed at the previous stage as unconstitutional but also laid down in clear and unequivocal terms that the distribution of appointments, posts or promotions made in the implementation of the communal policy was contrary to the constitutional guarantee of Article 16. The law so declared by this court was binding on the respondent State and its officers and they were bound to follow it whether a majority of the present respondents were parties or not in the previous petition.
>
> (Emphasis supplied)
>
> It cannot therefore be contended by anyone that since Acharya, the petitioner in Special Civil Application No.2215 of 1979, was not a party to Special Civil Application No.806 of 1975, that the law laid down by D.A.Desai, J in his judgment in that case on Aug, 7, 1975 was not applicable to the case of Acharya. Whether the law is declared by the Supreme Court or whether the law is declared by the High Court, the legal position as regards authorities and tribunals subordinate to the Supreme Court and High Courts respectively is the same as pointed out by Subba Rao, J in East India Commercial Co's case (AIR 1962 SC 1803) (supra).

7. In Baradakanta Mishra vs Bhimsen Dixit, AIR 1972 2466 : (1973 Cri.L.J. 19) the legal position regarding binding nature of the High Court's decision was once again reiterated by the Supreme Court and after quoting the above passage which we have extracted from the judgment of Subba Rao, J in East

India Commercial Co's case (AIR 1962 sc 1893) (supra) in paras 15 and 16 of the judgment. Dwivedi, J speaking for the Supreme Court observed at page 2469 (of AIR) : (at pp.22,23 of Cr.L.J.)

> " The conduct of the appellant in not following the previous decision of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court. His conduct is therefore, comprehended by the principles underlying the law of contempt. The analogy of the inferior court's disobedience to the specific order of a superior court also suggests that his conduct falls within the purview of the law of contempt. Just as the disobedience to a specific order of the court undermines the authority and dignity of the court in a particular case, similarly any deliberate and malafide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court. Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the latter conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court generally, but it is also likely to subvert the Rule of Law and engender harassing uncertainty and confusion in the administration of law. "

8. In Hasmukhlal C.Shah vs State of Gujrat, (1978) 19 Guj LR 378, a Division Bench of Gujrat High Court consisting of J.B.Mehta and P.D.Desai, JJ after examining several decisions on the point, observed :

> " In a Government which is ruled by laws,

there must be complete awareness to carry out faithfully and honestly lawful orders passed by a Court of law after impartial adjudication. Then only will private individuals, organisations and institutions learn to respect the decisions of Court. In absence of such attitude on the part of all concerned, chaotic conditions might arise and the function assigned to the courts of law under the Constitution might be rendered a futile exercise. "

9. From the above four decisions, the following propositions emerge :

(a) It is immaterial that in a previous litigation the particular petitioner before the Court was or was not a party, but if a law on a particular point has been laid down by the High Court, it must be followed by all authorities and tribunals in the State ;

(b) The law laid down by the High Court must be followed by all authorities and subordinate tribunals when it has been declared by the highest Court in the State and they cannot ignore it either in initiating proceedings or deciding on the rights involved in such a proceeding;

(c) If inspite of the earlier expositiion of law by the High Court having been pointed out and attention being pointedly drawn to that legal position, in utter disregard of that position, proceedings are initiated, it must be held to be a wilful disregard of the law laid down by the High Court and would amount to civil contempt as defined in S. 2 (b) of the Contempt of Courts Act, 1971.

10. The respondents as directed by us have deposited amount of Rs.14,33,000/- with the Prothonotary and Senior Master of this Court and also filed an affidavit duly affirmed by Ms.Reena Shetty, Assistant Commissioner of Customs (Imports) tendering her unconditional apology along with copy of the standing order No.7967 dated 26th April, 2007 with covering letter issued by the Commissioner of Customs (Imports) the text of which are as under :

OFFICE OF THE COMMISSIONER OF CUSTOMS (IMPORTS)
NEW CUSTOM HOUSE, BALLARD ESTATE, MUMBAI-01.

F.No.S/26-89/2007/Apprg (General) Date 26.4.2007

To,

1. The Commissioner of Customs (General)
   New Custom House,
   Ballard Estate, Mumbai-400 001.

2. The Commissioner of Customs (Export)
   New Custom
   House, Ballard Estate,
   Mumbai-400 001.

Sir,

Subject: Enforcement/encashment of Bank Guarantee during pendency of appeal-reg.

I am enclosing herewith a Standing Order No.7967/2007 dated 26.4.2007 on the above subject.

2. The Hon'ble Mumbai High Court has taken a serious view in cases where the department has invoked the Bank Guarantee within the statutory period of appeal. You may like to bring this Standing Order to the notice of all the officers working under you to ensure that the Hon'ble High Court's directions are strictly complied with.

Yours Faithfully,
sd/ (A.K.PRASAD)
Commissioner of Customs (Import)
Tel.No.2262 0845

Encl: As above

OFFICE OF THE COMMISSIONER OF CUSTOMS (IMPORT)
NEW CUSTOM HOUSE, BALLARD ESTATE,MUMBAI-01.

F.No.S/26-89/2007 Apprg.(General) Date:26.4.2007

STANDING ORDER 7967/2007

Subject: Enforcement/encashment of Bank Guarantee during pendency of appeal - reg.

As per Board's Circular No.788/21/2004-Cx, dated 25.5.2004 coercive measures should not be initiated during the period prescribed in the said circular. It is observed that some officers are enforcing the Bank Guarantees within the appeal period. This matter had come before the Hon'ble Mumbai High Court in the case of Ocean Driving Center Ltd vs Union of India - 2005 (180) E.L.T. 313 (Bom), Noble Asset Company Ltd vs Union of India - 2005 (187) E.L.T. 438 (Bom) and M/s Mahindra & Mahindra Ltd vs Union of India - 1992 (59) ELT 505 (Bom) wherein it has been held that encashment/enforcement of Bank Guarantee tantamount to resorting to coercive measures and this should not be done within the appeal period.

2. This instructions should be strictly complied with. Any deviation would be viewed seriously.

S/d (A.K.Prasad)
Commissioner of Customs (Import)
Mumbai.

11. In view of the unconditional apology tendered by Ms.Reena Shetty, Assistant Commissioner of Customs (Import) Apprising Group B,the directions issued by the Commissioner of Customs (Import) and the specific assurance given to us by Mr.Rana, learned senior

counsel appearing for the Union of India that in future adequate care would be taken to scrupulously follow the law laid down by this Court, we think it fit to discharge Show cause notice issued to the Assistant Commissioner of Customs (Import). Accordingly, notice stands discharged.

12. Since petitioner has withdrawn the amount deposited by the Revenue, after renewal of the bank guarantee, as such cause of action to proceed with the petition does not survive.

13. Petition accordingly stands disposed of with no order as to costs.

(V.C.Daga, J) **(Dr.Radhakrishnan, J)**